

ROBERT R. BRAMBLEY

IBLA 78-600

Decided April 10, 1979

Appeal from decision of Arizona State Office, Bureau of Land Management, rejecting first drawn simultaneous oil and gas lease offer A10972.

Reversed.

1. Oil and Gas Leases: Applications: Generally

In cases raising the question whether regulations should be interpreted to the detriment of persons seeking oil and gas leases, the standard to be applied is whether the regulations are so clear that there can be no basis for the applicant's noncompliance. If there is doubt as to their meaning and intent, such doubt should be resolved in applicant's favor.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

The applicability of 43 CFR 3102.6-1 governing agents is far less certain where the agent is the offeror and is also the agent of the other interested parties who will ultimately hold the entire lease interest, as no provision of the regulation unambiguously requires the agent in these circumstances to show that he has authority to sign his own name as offeror.

APPEARANCES: Robert R. Brambley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert R. Brambley appeals the July 25, 1978, decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting his

offer to lease A10972, for oil and gas parcel number AZ62 in the June 1978 list of available lands. 43 CFR 3112.1-2. Appellant submitted the sole offer to lease parcel AZ62, and therefore no drawing was necessary as to this parcel.

Appellant Robert Brambley completed the face of the drawing entry card in his own name as offeror, and supplied his own address and social security account number. On the reverse side, Brambley listed the names of five parties in interest 1/ and their respective percentage interests in the offer to lease. These percentage interests accounted for the entire proposed leasehold, or 100 percent thereof. The signature of Robert R. Brambley appears on the reverse side of the entry card in the space provided for the offeror's signature, beneath which his name and the designation "Agent" are printed by means of a rubber stamp.

The application was rejected on the ground that Brambley failed to comply with the disclosure requirements of 43 CFR 3102.6-1(a) pertaining to agents or attorneys-in-fact. That regulation provides in material part:

§ 3102.6 Attorney-in-fact.

§ 3102.6-1 Statements.

(a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4-1) evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority, is still in effect will be accepted.

(2) If the offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, \* \* \* giving full

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1/ The other parties in interest are Susan Brambley, Sharon Milazzo, John Blasi, Paul Milbrodt, and Bradley Denham.

details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent \* \* \* and whether his direct and indirect interests in oil and gas leases, applications, and offers including options \* \* \* exceed permissible acreage \* \* \*. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. [Emphasis supplied.]

Each party in interest timely submitted within 15 days of the offer a separate statement disclosing all matters required by 43 CFR 3102.6-1 and 3102.7. Each also filed a document entitled a "Notice of Power of Attorney," which fully disclosed the nature and terms of Mr. Brambley's agency. As these statements were filed within the time required by regulation, the fact that they did not accompany the offer, in these circumstances, will not be held violative of 43 CFR 3102.6-1, since its applicability here is questionable and it is ambiguous as applied to these facts.

The facts presented herein are very nearly identical to those of A. M. Shaffer, et al., Betty B. Shaffer, 73 I.D. 293 (1966). In Shaffer, several agents named themselves the offerors for a number of noncompetitive offers to lease for oil and gas. On each offer, the agent named other parties in interest who owned or would ultimately own 100 percent of the proposed leaseholds. Within 15 days of filing the offers, the agents submitted supplementary statements over their signatures as offerors, and statements from the other parties in interest, pursuant to 43 CFR 3123.2 (now 43 CFR 3102.6-1). These statements fully disclosed all matters required under the regulation.

The local land office rejected all the offers for the same reasons as appear in the case before us. The first was that the named offerors were not qualified applicants because they were employed simply as agents and had no interest in the offers or leases. The second reason was that the offers were improperly filed because there was no disclosure of the agency relationship at the time of filing, and even had that been done, for the further reason that the offers were not accompanied by statements setting forth the interests of principal and agent. On appeal to the Director the decisions were affirmed.

The Assistant Solicitor in Shaffer reversed these decisions and held that appellants had complied with the disclosure regulations.

[1] The Assistant Solicitor began his analysis noting that in cases raising the issue whether regulations should be interpreted to the detriment of persons seeking oil and gas leases, the applicable

standard is whether the regulations are so clear that there can be no basis for the applicants' noncompliance, and that if there is doubt as to their meaning and intent, such doubt should be resolved in appellants' favor. 73 I.D. 293 at 298.

The ambiguity of 43 CFR 3123.2 (now 43 CFR 3102.6-1) was delineated as follows. The regulation could be read to apply only to those instances where the offer is executed in the principal's name as offeror and is signed by the agent in a representative capacity on behalf of the principal.

[2] In the opposite instance, presented by the facts of this case and Shaffer, the applicability of the regulation is far less certain where the agent is the offeror and is also the agent of the other interested parties who will ultimately hold the entire lease interest. As the Assistant Solicitor observed in Shaffer, no provision of the regulation unambiguously requires the agent in these circumstances to show that he has authority to sign his own name as offeror.

Moreover, the Assistant Solicitor reasoned that no advantage could be gained by the agents in filing as they did; the named offeror as well as the parties in interest are equally chargeable with the full lease acreage, and the filing of statements required of the latter, 43 CFR 3123.2(c)(3) (now 43 CFR 3102.7), showed the qualifications of both agent and principal. Compliance with the regulation pertaining to interested parties, in these circumstances, was held to have satisfied the underlying purposes of disclosure in the agency provisions.

We perceive no reason why the additional fact that Mr. Brambley noted his representative capacity should compel a decision different from that reached in Shaffer. We share the view of the Assistant Solicitor:

Since neither the letter nor the spirit of the agency provision has been clearly violated in these circumstances, we believe that any doubt as to the application and interpretation of the regulation should be resolved in appellants' favor and that they should not be penalized for failing to comply with the regulation whose application is far from certain. Accordingly, we conclude that the agency provisions of the regulation are not to be applied to an offer filed by an agent in the circumstances of these appeals. 43 I.D. at 300-301.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for further proceedings not inconsistent with this decision.

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Douglas E. Henriques  
Administrative Judge

I concur.

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Anne Poindexter Lewis  
Administrative Judge

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

The issue raised in this case is whether the fact the offer in this case was not accompanied with the statements required by 43 CFR 3102.6-1 necessitated rejection of the offer. Among other matters, paragraph (a)(1) of that regulation requires evidence of the authority of the attorney-in-fact or agent "to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror." Paragraph (a)(2) provides:

If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued \* \* \* giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. [Emphasis added.]

Reading paragraphs (1) and (2) together, the most reasonable interpretation is that they apply only when an agent signs an offer in behalf of the offeror and the offeror is someone other than the agent. Thus, the underlined sentence in paragraph (2) clearly suggests that the principal is the offeror.

The situation here, however, is different. The named offeror, Robert R. Brambley, signed the offer in his own name, with a stamp beneath his signature with his name and the word "Agent" affixed. The drawing entry card (offer) also revealed the names of five other persons as the parties in interest and a percentage of interest which each was to hold. These total 100 percent. Thus, the first subsidiary question which arises is whether an offer may be filed by an agent as the offeror although others will hold the entire interest in the lease. This question was answered in the affirmative by the Department in *A. M. Shaffer*, 73 I.D. 293 (1966). That case dealt with the same factual milieu as that presented here; namely, the filing of

an offer signed by the person named as offeror, but showing that 100 percent interest in the offer will be held by other persons. In that case, as in this case, full disclosure of the interests of all the parties and their arrangement was filed within the 15 day-time required by another regulation requiring disclosure of other parties in interest to a lease, presently-numbered regulation 43 CFR 3102.7. I agree with the conclusion in Shaffer that the regulation requiring the statements to accompany the offer where the offer is in the name of the agent and signed by the agent is ambiguous. Therefore, as regulation 43 CFR 3102.6-1 is ambiguous as applied to the facts presented in this case, the offer should not be rejected because it was filed by someone as offeror even if he or she is not to hold an interest in the lease or because the statements required in that regulation did not accompany the offer, if the requirements of the controlling regulation 43 CFR 3102.7 were met.

There is some dictum in the Shaffer case speculating on completion of a card in the principal's name as offeror. However, such dictum is not relevant to the case here and, in any event, has been overturned by the majority in D. E. Pack (On Reconsideration), 38 IBLA 23, 35, 85 I.D. \_\_\_\_ (1978).

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Joan B. Thompson  
Administrative Judge

